

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JASON ARMSTRONG,

Plaintiff,

v.

18-CV-1380 (JLS) (LGF)

DR. KEN JIN, M.D., and
DR. PAULA BOZER, M.D.

Defendants.



DECISION AND ORDER

Plaintiff Jason Armstrong commenced this action pursuant to 42 U.S.C. § 1983 claiming that, while in New York State Department of Corrections and Community Supervision (“DOCCS”) custody, Defendants were deliberately indifferent to his serious medical needs in violation of his constitutional rights. *See* Dkt. 1. The case has been referred to United States Magistrate Leslie G. Foschio for all proceedings under 28 U.S.C. §§ 636(b)(1)(A), (B), and (C). Dkt. 21.

Defendants moved for summary judgment. Dkt. 61. Plaintiff opposed the motion, Dkt. 65, and Defendants replied. Dkt. 66. On October 31, 2024, Judge Foschio issued a Report and Recommendation (“R&R”) recommending that this Court grant Defendants’ [61] motion based on Plaintiff’s failure to exhaust administrative remedies.¹ *See* Dkt. 67 at 33.²

¹ Alternatively, the R&R recommends that this Court deny the [61] motion on the merits of Plaintiff’s Eighth Amendment claims.

² Page references refer the CM/ECF stamped numbering in the header of each page.

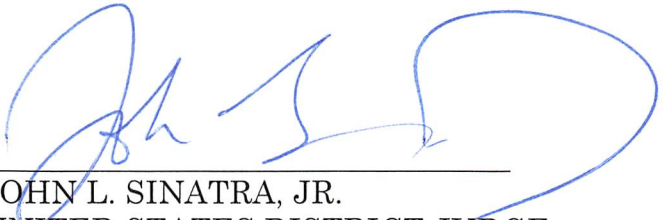
Plaintiff objected to the R&R. Dkt. 68. Specifically, he objects to the R&R's conclusion that he failed to exhaust his administrative remedies. *Id.* at 6.³

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

This Court carefully reviewed the R&R, the objections, and the relevant record. Based on its *de novo* review, the Court accepts and adopts Judge Foschio's recommendation that this Court grant summary judgment to Defendants based on Plaintiff's failure to exhaust administrative remedies.

As such, the [61] motion is GRANTED. The Clerk of Court shall close this case.
SO ORDERED.

Dated: January 21, 2025
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE

³ Defendants also objected to the R&R. Dkt. 69. Specifically, they “object to the R&R's finding that Plaintiff's Eighth Amendment claims for deliberate indifference should survive summary judgment.” *Id.* at 2. Plaintiff opposed the objections, Dkt. 73, and Defendants replied. Dkt. 74.